IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.8.2005

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.No.14690 of 1995

The Workmen,
rep. by N.Madhavan,
Hackbridge & Hewittic Easun Group,
No.41/2 W.K.G.Garden 2nd Street,
Old Washermenpet,
Chennai-21.
(Cause title amended as per the
order dated 6.1.2005 in
W.P.M.P.No.47126 of 2004) .. Petitioner

vs.

1. The Management,
   Hackbridge & Hewettic Easun Ltd.,
   Thiruvottriyur,
   Madras-19.

2. The Presiding Officer,
   Industrial Tribunal,
   Madras. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus after calling for the concerned records relating to the Award in I.D.No.16 of 1977 dated 31.3.1994 passed by the second respondent and after quashing that part of the Award denying reinstatement and other benefits, suitably modify the Award and direct the first respondent to reinstate in service the 41 workmen/petitioners with back-wages, continuity of service and all other attendant benefits.

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For petitioner : Mr.K.S.Narayanan
For respondents: Mr.N.Balasubramanian for R-1

ORDER

The challenge in this writ petition is to the Award of the second respondent dated 31.03.1994 in I.D.No.16 of 1977, in and by which, the second respondent-Tribunal has granted the relief of payment of retrenchment compensation to 41 workmen.

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2. The brief facts which are required to be stated are that 83 workmen of the first respondent-Management lost their employment by virtue of closure of Factory-II of the first respondent-Management. The non-employment of the said workmen was challenged by the petitioner by way of an industrial dispute, which came to be referred for adjudication before the second respondent-Tribunal in I.D.No.16 of 1997 by G.O.R.T.No.412, Labour and Employment Department, Government of Tamil Nadu, Madras-9 dated 23.02.1997. The issue which came to be referred for adjudication reads as under:

> "Whether the stoppage of work in Factory-II of of Hackbridge Hewittic and Easun Limited, Madras-19, with effect from 30th November 1976 is a case of closure or lock-out and to what relief the workmen would be entitled?"

3. In the said dispute, an Award came to be passed by the second respondent on 26.06.1979 holding that the termination of 83 workmen was due to closure of Factory-II of the first respondent-Management, and that therefore, they were entitled only for compensation payable under Section 25-FFF of the Industrial Disputes Act (hereinafter referred to as I.D. Act) and the same was not a 'retrenchment' falling under Section 25-F of the I.D Act. While holding so, the second respondent-Tribunal also took note of the settlement of the claims of 26 out of 83 workmen during the pendency of the dispute. The second respondent-Tribunal ultimately held that the workmen are not entitled to any other relief.

4. The said Award of the second respondent-Tribunal was challenged by the petitioner before this Court in W.P.No.2774 of 1980. By an order dated 30.06.1980, the writ petition was dismissed, confirming the Award dated 26.06.1979. The petitioner preferred Writ Appeal No.149 of 1982 and a Division Bench of this Court, though held that the closure of Factory-II was true, took the view that Section 25-G of the I.D Act was not followed inasmuch as the common seniority of both Factory I & II was not taken into account while terminating the services of the workmen. The Division Bench therefore, while disposing of the writ appeal on 25.07.1989, remanded the matter back to the second respondent-Tribunal while permitting the first respondent-Management to let in necessary evidence to establish that the termination of 83 workmen pursuant to the closure of Factory-II was justified.

5. Pursuant to the said judgment of the Division Bench, the Second Respondent-Tribunal has now passed the present impugned Award dated 31.03.1994, wherein the second respondent-Tribunal has held that the first respondent-Management failed to produce the common seniority list of all the workmen of both Factories I & II and therefore the retrenchment of 83 workmen was not justified. The

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Tribunal however held that as on the date of the Award, the claims of only 41 workmen remained to be considered and therefore, they alone are to be granted the relief. Ultimately, the second respondent-Tribunal directed the first respondent-Management to pay retrenchment compensation to all the 41 workmen. Assailing the said Award, the petitioner has come forward with the present writ petition contending that the first respondent ought to have granted the relief of reinstatement with all back-wages and other attendant benefits.

6. Mr.K.S.Narayanan, learned counsel appearing for the petitioner contended that when once the Division Bench of this Court, in its order dated 25.7.1989, in W.A.No.149 of 1982, concluded that the first respondent-Tribunal ought to have looked into the common seniority list of the workmen of both the Units and find out as to whether the "last come first go" principle was duly followed while resorting to the retrenchment of 83 workmen involved in the present dispute, in the absence of the first respondent-Management, establishing the said factor to the satisfaction of the second respondent-Tribunal by producing the common seniority list of both the Units, namely Factories-I & II, the Tribunal ought to have held that the non-employment of 83 workmen was not justified and consequently, they are all entitled for reinstatement with all back-wages, continuity of service and other attendant benefits.

7. As against the above submissions, Mr.N.Balasubramanian, learned counsel appearing for the first respondent-Management would contend that in a case of closure, the question of "last come first go" principle will have no application and therefore, at best, the workmen are only entitled for the compensation payable pursuant to the closure of Factory-II as per Section 25-FFF of the I.D. Act.

8. Elaborating his submission, learned counsel for the first respondent-Management pointed out that the closure related to Factory-II, which commenced its operations in the year 1966, while Factory-I was in existence right from 1956. It is stated that while in Factory-I, the first respondent-Management was engaged in the production of power transformers, in Factory-II, they were manufacturing the distribution transformers. It is also stated that both the Factories were having independent licences and were located in different villages.

9. Learned counsel for the first respondent-Management further contended that there was no functional integrality and therefore, there is no question of maintaining a common seniority list.

10. According to learned counsel for the first respondent-Management, when the Division Bench, in its judgement dated 25.7.1989, upheld the finding of the Tribunal in its earlier Award dated 26.6.1979 relating to the factum of closure as true, having regard to the decisions of the Supreme Court as well as the

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provisions of the I.D. Act, the consequential relief that could be granted to the workmen affected by the closure, would be the benefits payable under Section 25-FFF of the I.D. Act and nothing more.

11. Learned counsel for the first respondent-Management placed reliance on the following decisions reported in:

(i) AIR 1973 SC 878 (Management, Hindustan Steel vs. Workmen) (Supreme Court),

(ii) AIR 1987 SC 1478, (Isha Steel Treatment, Bombay vs. Assocn. of Engg. Workers) (Supreme Court),

(iii) AIR 1991 SC 1676 (Orissa Cement Ltd. vs. State of Orissa) (Supreme Court),

(iv) 1979 (I) L.L.J. 41 (Coimbatore Pioneer B.Mills vs. Presiding Officer, LR. court)(Madras High Court) and

(v) 1980 (I) L.L.J. 503 (Workmen of Coimbatore Pioneer "B" Mills Ltd. vs. Labour Court)(Supreme Court).

12. In AIR 1973 SC 878 (cited supra), the Supreme Court has held in paragraph 10 as under:

> "The word 'undertaking' as used in S.25-FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondents. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section. The question has indeed to be decided on the facts of each case. ...."

13. In AIR 1987 SC 1478 (cited supra), the Supreme Court followed its earlier decision reported in AIR 1973 SC 878 (cited supra). It also considered the question of application of Section 25-G of the I.D. Act and has held as under in paragraph 7:

> " .... It is not the case of the workmen in the present case that the II unit could not continue to function after the closure of the I unit. As already mentioned, the II unit is

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continuing to function as usual even now notwithstanding the stoppage of the activities at the I unit. The question of application of S.25-G of the Act arises only when the services of the workmen are retrenched. In Santhosh Gupta v. State Bank of Patiala (1980 (3) S.C.R. 884 : (AIR 1980 SC 1219), it is laid down that if the termination of service of a workman in a given case falls either under S.25-FF or under S.25-FFF of the Act it would not be a termination falling under S.25-F of the Act. This Court has observed in that case that after the enactment of S.25-FF and S.25-FFF retrenchment included every kind of termination of service except those not expressly included in S.25-F or not expressly provided for by other provisions of the Act such as Ss.25-FF and 25-FFF. Hence if the case is one of genuine closure then the question of applying S.25-G of the Act which is applicable to a case of retrenchment would not arise."

14. In AIR 1991 SC 1676 (cited supra), in paragraph 71, the Supreme Court, while dealing with the area of writ jurisdiction of Courts, has held as under:

" ... The declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof are two different things and, in the latter sphere, the Court has, and must be held to have, a certain amount of discretion. It is a well-settled proposition that it is open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. It will be appreciated that it is not always possible in all situations to give a logical and complete effect to a finding. Many situations of this type arise in actual practice. For instance, there are cases where a Court comes to the conclusion that the termination of the services of an employee is invalid, yet it refrains from giving him the benefit of "reinstatement" (i.e. continuity in service) or "back wages". In such cases, the direction of the Court does result in a person being denied the benefits that should

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flow to him as a logical consequence of a declaration in his favour. It may be said that, in such a case, the Court's direction does not violate any fundamental right as happens in a case like this where an "illegal" exaction is sought to be retained by the State. But even in the latter type of cases relief has not been considered automatic. ..."

15. In 1979 (I) L.L.J. 41 (cited supra), a Division Bench of this Court, even after holding that in a case of retrenchment where the Management acted bona-fide, the non-compliance of Section 25-F (b) will still give the Labour Court a discretion either to order reinstatement or payment of compensation in lieu of reinstatement, depending on the facts and circumstances of each case. This decision of the Division Bench was also confirmed by the Supreme Court in the judgment reported in 1980 (I) L.L.J. 503 (cited supra).

16. One other relevant factor pointed out by the learned counsel appearing for the petitioner is that out of 83 workmen involved at the time of closure of Factory-II, as found by the first respondent-Tribunal, the case of 41 alone remained for consideration. Even out of 41, the case of 2 of the employees has to be necessarily excluded, inasmuch as one of them, by name M.Md Ibrahim with token No.695 was transferred to Unit No.I before the date of closure, namely 1.11.1976 and the other workmen T.K.Govindarajan with token No.790 resigned in the year 1978. Of the remaining workmen, seven workmen died between 1993 and 2002. They are:

	Names	Date of death
(1)	V.Sathyamurthy	15.5.1993
(2)	N.Govindan	21.3.2001
(3)	G.Ramalingam	1998
(4)	S.Krishnan	1998
(5)	M.Mookiah	24.4.1998
(6)	A.Pinnathevar	1998
(7)	P.Panneer Selvam	2002

17. Of the remaining 32 workmen, 18 are stated to have reached their age of superannuation between 1990 and 2004 as stated below:

	Names	Date of retirement
(1)	A.Chinnaiah	20.04.1990

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(2)	A.Ramarao	26.11.1993
(3)	S.Syed Rahim	1996
(4)	R.Guru samy	05.06.1994
(5)	G.Sowriappan	1996
(6)	N.Velaudham	10.02.2002
(7)	B.Mesiadoss	10.06.2003
(8)	R.K.Suri	08.03.2002
(9)	A.M.Sankaran	2003
(10)	M.Jonson	2003
(11)	S.B.Srinivasan	08.09.1990
(12)	E.Paulraj	02.06.2003
(13)	M.D.Musthafa	01.07.2002
(14)	R.Ammaiappan	2002
(15)	E.P.Pandi	15.09.2002
(16)	P.Ramasamy	17.12.2004
(17)	M.Raman	2004
(18)	V.Balakrishnan	2002

18. The balance that remains is only the case of 14 workmen, namely,

S.No.	T.No.	Names
1	893	A.Dayabaran
2	914	G.Sapani
3	925	R.Ramudu
4	926	U.Muralidharan
5	927	N.Madhavan
6	928	S.N.Panchatcharam
7	931	S.Thulasiraman
8	936	K.A.Balakrishnan
9	937	S.Ramadoss
10	952	S.Paneerselvam
11	965	E.Paulsamy
12	960	N.Subramani
13	962	N.Lakshmanan

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19. In the case on hand, in the earlier round, the Tribunal gave a finding of fact that closure of Factory-II was real, that there was no functional integrality between Factories-I & II, that there was no question of application of Section 25-G of the I.D. Act and since the payment of three months' wages as compensation under Section 25-FFF has been paid, the workmen were not entitled for any other relief.

20. Though the learned single Judge upheld the said Award, the Division Bench upheld the finding of the Tribunal that there was every justification for closing down the Factory-II. However, it took a view that since there was functional integrality between Factories-I and II, the first respondent-Management ought to have prepared a common seniority list of all the workmen both in Factory-I & Factory-II before resorting to retrenching 83 workmen pursuant to the closure of Factory-II. Ultimately, in paragraph 14 in W.A.No.149 of 1982, the Division Bench held as under:

> "Therefore, even though the Management had the right to close down the second unit on which aspect a concurrent finding having been arrived at it has committed an error in confining the retrenchment to 83 workmen, who by a fortitous circumstances happened to work in Unit No.II on 30.11.1976, indeed ought to have looked into the seniority list of workmen in both the units and adopted the "last come first go" rule in retrenching the workmen."

21. The Division Bench therefore remanded the matter back to the second respondent-Tribunal by setting aside paragraph 10 of the Award of the second respondent-Tribunal. While remitting the matter back to the second respondent-Tribunal, the Division Bench permitted the Management to place before the Tribunal necessary evidence to enable both the parties to show as to which of the 83 workmen could have been retrenched pursuant to closure of Factory-II.

22. It was in these circumstances, the Tribunal, in the present Award dated 31.3.1994, held that the first respondent-Management, having failed to place necessary evidence showing the seniority of those who continued to be employed in Factory-I, an adverse inference had to be drawn. So holding, the Tribunal held that out of 83 workmen, remaining 41 employees who were retrenched from Factory-II were entitled for the retrenchment compensation at the rate of 15 days' average pay for every completed year of service till 30.11.1976.

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23. The various submissions made on behalf of the petitioner based on the decisions reported in AIR 1973 SC 878 (cited supra) and AIR 1987 SC 1478 (cited supra) may not be relevant for the present purpose, because the question is while passing the present impugned Award, the second respondent-Tribunal has adhered to the directions of the Division Bench of this Court in the judgment dated 25.7.1989. Whatever submissions made by the learned counsel for the first respondent-Management based on Section 25-FFF, cannot be considered by me in the present juncture where I am bound by a Division Bench judgment rendered in this case referred to above.

24. It is not in dispute that the first respondent-Management did not let in any fresh evidence before the second respondent-Tribunal after the remand. In particular, no such record pertaining to the common seniority of all the workmen relating to Factories-I and II was placed before the second respondent-Tribunal after the remand. Therefore, as rightly held by the Tribunal, it had to necessarily draw an adverse inference relating to the seniority of the workmen who were sent out pursuant to closure of Factory-II on 30.11.1976.

25. As far as the grievance of the petitioner as against the Award in denying them reinstatement, I find that the Tribunal, after holding that the remaining 41 persons were not retrenched properly while their juniors were working in Factory-I and also after holding that normally they would be entitled for reinstatement, only ordered for payment of retrenchment compensation as provided under Section 25-FF of the I.D. Act. The reasoning of the second respondent-Tribunal is to the following effect:

> "Normally, these 41 persons will be entitled to reinstatement. But, we find in this case nearly 18 years have lapsed from the date of their retrenchment and if, they are given the relief of reinstatement now, it will affect the workmen who have been working in the Factory-I for so long a period for no fault of them. These 41 persons have also not worked during these 18 years. Therefore, in these circumstances, I find that this is a fit case where instead of ordering reinstatement of these 41 persons, the respondent should be directed to pay the retrenchment compensation to these 41 workmen at the rate of 15 days average pay for every completed year of service till 30th November 1976. The names of 42 workmen who have settled is mentioned in the annexure of this award. ..."

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26. As far as the said relief granted by the second respondent-Tribunal is concerned, in the first place, it will have to be held that for granting the said relief, the second respondent-Tribunal has given some reasons.

27. In fact, in the course of the submissions made before me, learned counsel for the first respondent-Management submitted that even the operation in Factory-I was also stopped from the second half of 2004. Learned counsel therefore contended that there is absolutely no scope for reinstatement of any of the employees, since no manufacturing operation is being carried on by the first respondent-Management.

28. In the abovesaid background, when the reasoning of the second respondent-Tribunal in denying the reinstatement is considered, it will have to be held that those reasons were very relevant from the point of view of the interest of the workmen themselves. Moreover, at the time of closure effected by the first respondent-Management on 30.11.1976, all the 83 workmen were offered only three months' wages apparently by relying upon the proviso to Section 25-FFF of the I.D. Act. In the Annexure to the closure notice, it was stated that there were no orders for distribution transformers, that the entire operation was suspended from 20.3.1976 and that there has been no improvement in the situation and therefore, it was decided to close down the factory.

29. In the explanation to the proviso to sub-section (1) of Section 25-FFF of the I.D. Act, it is clearly stated that an undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stocks or the expiry of the period of lease or licence granted to it or in a case where the undertaking is engaged in mining operations, exhausting of the minerals in the area in which such operations are carried on, should not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso.

30. Therefore, the reasoning of the first respondent-Management, namely that there were no orders for distribution transformers which was being manufactured in Factory-II and that there was no improvement in the said situation for closing down the said Factory, can never be held to be an unavoidable circumstance in order to restrict the payment of the closure compensation to a minimum period of three months. Therefore, when the various reasons mentioned by the second respondent-Tribunal for not ordering reinstatement, weighed with it, it will have to be held that the grant of retrenchment compensation at the rate of 15 days' average pay for every completed year of service of each of the remaining 41 workmen, calculating their period of service upto the date of closure, namely 30.11.1976, cannot be held to be illegal or invalid or unjustified.

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31. In this context, the ruling of the Supreme Court reported in AIR 1991 SC 1676 (cited supra), wherein the Supreme Court has categorically held that it is not always possible in all situations to give a logical and complete effect to a finding and in particular, it quoted an instance where the Court even after coming to the conclusion that the termination of the service of an employee is invalid, it can still refrain from giving the benefit of reinstatement or back-wages.

32. Applying the ratio of the said decision to the facts of this case and taking note of the various reasons mentioned by the second respondent-Tribunal and also the submissions now made on behalf of the learned counsel for the first respondent-Management that even the Factory-I is not functioning as on date, I am of the view that the Award of retrenchment compensation as directed by the second respondent-Tribunal was well justified on the facts and circumstances of this case and such a relief granted by the second respondent-Tribunal is also in the interest of the aggrieved workmen themselves, as at this distant point of time, the workmen are at least put in a position to get the statutory retrenchment compensation which was legally due and payable to them as on the date of closure, namely 30.11.1976. However, since such compensation was not paid on the due date for no fault of the workmen, it will have to be held that a minimum of 6% interest should atleast be directed to be paid by the first respondent-Management upto the date of the Award of the Tribunal, namely 31.3.1994. Since it is stated that out of 41 workmen, since admittedly, even according to the learned counsel for the petitioner, two of the workmen, namely M.Md.Ibrahim and T.K.Govindarajan were not entitled for any relief by virtue of their transfer to Unit-I in 1976 and resignation in 1978 respectively, this order will cover only the remaining 39 workmen.

33. Therefore, while upholding the Award of the second respondent-Tribunal, I hold that the award of retrenchment compensation as granted by the second respondent-Tribunal under the impugned Award, shall be restricted to the following 39 workmen:-

(1) A.Chinnaiah

(2) A.Ramarao

(3) S.Syed Rahim

(4) R.Guru samy

(5) G.Sowriappan

(6) N.Velaudham

(7) B.Mesiadoss

(8) R.K.Suri

(9) A.M.Sankaran

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(10) M.Jonson
(11) S.B.Srinivasan
(12) E.Paulraj
(13) M.D.Musthafa
(14) R.Ammaiappan
(15) E.P.Pandi
(16) P.Ramasamy
(17) M.Raman
(18) V.Balakrishnan
(19) V.Sathyamurthy
(20) N.Govindan
(21) G.Ramalingam
(22) S.Krishnan
(23) M.Mookiah
(24) A.Pinnathevar
(25) P.Panneer Selvam
(26) A.Dayabaran
(27) G.Sapani
(28) R.Ramudu
(29) U.Muralidharan
(30) N.Madhavan
(31) S.N.Panchatcharam
(32) S.Thulasiraman
(33) K.A.Balakrishnan
(34) S.Ramadoss
(35) S.Paneerselvam
(36) E.Paulsamy
(37) N.Subramani
(38) N.Lakshmanan
(39) T.Vinayagam

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34. As far as the workmen whose names are found between S.Nos.19 to 25 of the above list who are stated to have lost their life during the pendency of this litigation, whatever compensation awarded by the second respondent-Tribunal in the impugned Award

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along with the interest now directed to be paid, shall be paid to their legal representatives whose claims are supported by the relevant materials and which is also authenticated by the petitioner-Union.

35. This writ petition is therefore disposed of upholding the Award dated 31.3.1994 passed in I.D.No.16 of 1977 with a further direction to the first respondent-Management to pay the retrenchment compensation as directed in the impugned Award along with the simple interest at the rate of 6% per annum from 30.11.1976 to 31.3.1994. No costs.

cs

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Presiding Officer,
Industrial Tribunal,
Madras.

+1 CC to Mr.K.S.Narayanan, Advocate, SR No.33562.

+1 CC to Mr.N.Balasubramanian, Advocate, SR No.33534.

AVM(C.O)
BG/17.08.2005.

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